



Sen. John C. Culver



Sen. Jake Garn

Lead Fight Over B-1 Bomber Funding Issue

their defenses as later U.S. models were produced having their own electronic defenses and much greater speed.

On Jan. 31, the day before the Senate vote, John C. Stennis (D Miss.), Defense Appropriations Subcommittee chairman, circulated to all senators a letter from Air Force Chief of Staff Gen. David C. Jones urging rescission of the B-1 money. While admitting that he still wanted the big bomber, Jones said there was "no realistic probability" that the B-1 would be built. Therefore, he said, the Air Force had other pressing needs for the \$742 million it ultimately would cost to build and test the two additional planes.

The Air Force assessment of the political situation—that Carter would prevail in the end, even if Congress kept the B-1 alive a little longer—apparently was persuasive with a number of Pentagon-oriented Democrats like Stennis who had long supported B-1 production. After Carter announced his decision on June 30, 1977, Stennis had joined longtime B-1 foes Proxmire and Culver in trying to stop production funding so the money could be put to other defense uses.

Floor Debate

During five hours of sparsely attended debate Feb. 1, rescission supporters relied heavily on Gen. Jones' argument that the Air Force could not afford to spend \$742 million to preserve the B-1 production option for only six months. And Culver and Proxmire stressed the administration's original justification for canceling the B-1: Over the long-haul, the cruise missile was more likely than the B-1 to baffle Soviet air defenses.

The pro-B-1 side of the debate was dominated by conservative Republicans, including Jake Garn (Utah), John G. Tower (Texas) and Barry Goldwater (Ariz.). They cited cancellation of the B-1 as only one of a series of Carter decisions that could relinquish strategic superiority to the Soviet Union by slowing modernization of the U.S. nuclear arsenal.

Nearly isolated, ideologically, among B-1 supporters was Majority Whip Alan Cranston (D Calif.), in whose state the B-1 would be manufactured. Cranston denied that he was motivated by constituency pressure, noting that he had voted against many weapons purchases that would have meant jobs for Californians. He insisted the B-1 was needed to hedge against uncertainty over the performance of the cruise missile. And he warned that large-scale deployment of the cruise missile could undercut chances for future strategic arms limitation treaties because limits on these relatively small weapons could not be verified.

B-1 Votes

The Senate took two votes on the B-1 issue Feb. 1. It first voted 57-38 for a motion by Stennis killing an attempt by S. I. Hayakawa (R Calif.) that would have instructed Senate conferees on the appropriations bill to yield to the House position, thus retaining the B-1 money. On the vote, six senators reversed the positions they had taken last July; four moved from opposition to support of the B-1 and two from support to opposition, for a net gain of two for continued production of the plane. (Vote 25, p. 311)

The Senate then voted 58-37 to insist on its position in favor of the rescission and requested a new conference with the House. (Vote 26, p. 311)

—By Pat Towell

Carter Reorganization:

Protections Against Abuses By U.S. Intelligence Agencies Called Inadequate

Although President Carter's Jan. 24 Executive Order reorganizing the intelligence community was the product of close cooperation between the White House and Congress, it did not contain all the restrictions and safeguards on intelligence activities that many members of Congress want to see incorporated in proposed legislation to establish charters for the intelligence agencies. (Earlier story, *Weekly Report* p. 173)

According to Sen. Birch Bayh (D Ind.), the new chairman of the Senate Intelligence Committee, "the safeguards of an improved Executive Order are not a complete model for legislation to protect the rights of

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—Vice President Mondale

Americans." Bayh argued that Carter's order failed to specify in sufficient detail the restrictions on information collection activities directed against Americans.

Nevertheless, Vice President Mondale called the President's reorganization "a historic document" enshrining the principle that "the only way you can effectively protect against your enemies is through the legal process."

The order placed more emphasis on making government officials responsible for their actions than on spelling out prohibitions as a means of ensuring that intelligence activities did not violate constitutional protections at home or jeopardize U.S. foreign policies.

Attorney General's Role

Under the order, the person designated to guard the rights of Americans was the Attorney General. He was

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given the responsibility of establishing procedures regulating the use of bugging and other intrusive intelligence-gathering techniques against Americans, both at home and abroad, and the authority to disapprove specific applications of those techniques when he found that they unnecessarily infringed on a person's privacy.

The order removed the vague "threat to national security" wording used to justify illegal actions in the past. But in its place, according to the American Civil Liberties Union (ACLU), the order substituted an equally vague standard, that of a reasonable suspicion that an American was working on behalf of a foreign power.

The order's " 'agent of a foreign power' has replaced 'national security' as the talisman which sweeps away the protections of the Constitution," the ACLU said. The Attorney General could approve warrantless surveillance techniques against any American suspected of being a foreign agent.

The order specifically prohibited only a few of the illegal covert activities of which the intelligence agencies, particularly the Central Intelligence Agency, have been accused in recent years. Assassinations and conducting experiments on unwitting subjects were banned. But the use of American journalists and attempts to overthrow foreign governments were not.

National Security Council aide David Aaron said this reflected the administration's belief that covert activities were best regulated by careful oversight rather than by specific bans. "It has been our judgment that the best way to handle that thus far is through close consultation with the Congress so that they know what we are doing," he said.

Consultation With Congress

To carry out that policy, the order provided for close consultation with the House and Senate intelligence committees and reaffirmed the authority of the Intelligence Oversight Board, composed of persons outside the government, to investigate reports of illegal activities. But Clifford P. Case (R N.J.), a member of the Senate Intelligence panel, argued that the provisions for oversight within the executive branch were inadequate. The reporting requirements for sensitive intelligence collection operations, he said, were "overly vague," and could result in approval of potentially embarrassing operations that did not have presidential approval.

Need for Legislation

Bayh pointed to three sections of the order that he said needed additional legislative safeguards in the agency charters. One issue, that of wiretapping for national security reasons, had already been the subject of legislation (S 1566) approved by the Senate Judiciary Committee in 1977 and currently before the Intelligence Committee. (*Background, 1977 Weekly Report p. 2697*)

Bayh found the provisions of the order regulating counterintelligence investigations by the FBI within the United States unsatisfactory. The charter legislation must establish procedures for all counterintelligence activities directed at Americans, he said, "including FBI in-

vestigations and any CIA or military counterintelligence operations which may affect Americans."

The Civil Rights Subcommittee of the House Judiciary Committee has scheduled hearings for late February on a legislative charter (HR 10400) for the FBI.

Bayh also found fault with the provisions allowing collection of personal information on Americans thought to be acting on behalf of foreign powers. The "charter legislation must specifically address the question of when, if at all, a law-abiding American citizen or business firm can ever be the target of covert foreign intelligence-gathering, either at home or abroad," he said.

National Security Council

The order reaffirmed the role of the National Security Council (NSC) as the highest decision-making body, short of the President, guiding the overall intelligence effort. Two subcommittees of the NSC were given intelligence responsibilities. They were:

- The Policy Review Committee (PRC), chaired by the Director of Central Intelligence (DCI). The PRC, composed of top-level officials whose duties required extensive use of intelligence information, was given the power to determine the major goals and priorities of the intelligence effort.

- The Special Coordinating Committee (SCC), chaired by the President's National Security Adviser. As the successor to NSC committees such as the 40 Committee and the Operations Advisory Group, the SCC was given power to review sensitive intelligence activities. Oversight of counterintelligence operations was added to its current responsibility to review covert activities and sensitive foreign intelligence collection activities.

The Senate Select Intelligence Committee, chaired by Frank Church (D Idaho), had found that NSC oversight of covert actions over the years was inconsistent and inadequate, and that counterintelligence had not been subjected to proper policy review. To insure that SCC approval of covert actions did not become a *pro forma* process—the Church committee had found that actions often were approved by subordinates of the NSC members after perfunctory telephone conversations—the order required full attendance at meetings before the SCC could approve sensitive actions.

Director of Central Intelligence

The order gave the DCI new authority to develop a National Foreign Intelligence Program budget for submission to the President. He was given the right to review and revise budget submissions of individual agencies, as well as the responsibility to defend the finished budget before Congress.

Other duties of the DCI under the reorganization were to serve as chief intelligence adviser to the President, head the CIA, and be the spokesman for the intelligence community and the chief of covert actions.

The Church committee had found that the powers of the DCI were insufficient to fulfill his nominal responsibilities for overall coordination and direction of the intelligence community. It pointed in particular to the DCI's inability to set budget levels for defense intelligence activities, which account for more than four-fifths of all intelligence spending.

Although the DCI's power over budget levels was increased, his authority over day-to-day activities of intelligence agencies other than the CIA remained limited. While it centralized in the DCI the key functions of budget

preparation, task-assignment and analysis, the order left operational control of other agencies decentralized.

Most important, under Carter's order the Secretary of Defense retained control over the vast apparatus of defense-related intelligence operations. Still under the authority of the Defense Secretary were the Defense Intelligence Agency, which is responsible for coordination of all military intelligence; the National Security Agency, which monitors communications between the United States and abroad and protects the security of government communications; the super-secret air and space reconnaissance operations; and the intelligence agencies of the individual military services.

The order established two entities to assist the DCI in his responsibilities of task-assignment and budget preparation. They were:

- The National Foreign Intelligence Board, composed of officials of agencies engaged in intelligence operations. Established to advise the DCI on intelligence production, the board was also assigned the task of assisting in the preparation of the intelligence budget.

- The National Intelligence Tasking Center, staffed by civilian and military employees. The duty of the center was to translate the intelligence requirements set by the PRC into specific objectives for individual intelligence agencies. The order put the center under control of the DCI, unless the President decided during times of emergency to transfer authority to the Secretary of Defense.

Surveillance Techniques

The order required the Attorney General to develop secret procedures for determining when to use certain investigative techniques. It provided that these intrusive methods could be used without a judicial warrant if the President approved their general use and the Attorney General okayed their specific application. The intrusive techniques were:

- Electronic surveillance, which the CIA was prohibited from using within the United States.

- Monitoring individuals through use of television cameras.

- Physical searches. Only the FBI was permitted to conduct physical searches within the United States.

- Mail surveillance. Mail inside the United States could not be opened without a warrant. Mail sent from the United States to another country could be opened, with presidential approval, once it crossed the U.S. border.

The FBI was allowed to use physical surveillance in the course of a lawful investigation. Other intelligence agencies were forbidden to use the technique within the United States, except against present intelligence employees or contractors thought to threaten disclosure of secret methods and data. Outside the United States, the agencies were allowed to use physical surveillance against Americans suspected of ties to foreign powers, terrorism, or narcotics involvement, and present or former intelligence employees or contractors.

Another intelligence collection technique, infiltration of domestic organizations, was prohibited unless officials of these organizations were informed that the membership included intelligence agents. Exceptions were granted if the technique was used by the FBI in the course of a lawful investigation, if it was directed against organizations composed primarily of foreign nationals, or if it was used for a limited time in the course of a foreign intelligence investigation. (President Ford's 1976 intelligence order had

prohibited infiltration of any group within the United States that was composed primarily of Americans.)

The order listed 11 types of situations in which intelligence agencies could collect and store personal information about Americans. Categories of material that could be collected included information regarding counterintelligence, current or former intelligence employees, potential sources or contacts, suspected foreign agents or terrorists, or persons thought to jeopardize intelligence personnel. According to the ACLU, the types of information that could be collected covered "virtually all of the rationales used to justify abuses in the past."

Other Restrictions

While its major emphasis was on development of procedures for safeguarding the privacy of individuals, the order did contain some specific prohibitions. Among the most important were those concerning:

- Tax Information. Intelligence agencies were forbidden to examine tax returns, except as authorized by law. The Church committee had found that the agencies had in the past obtained tax information through improper channels and without adequate justification.

- Human Experiments. Agencies were required to conduct any experimentation on humans in accordance with guidelines of the Department of Health, Education and Welfare. Experiments could only be conducted with the subject's consent. The Church committee documented a history of CIA testing of dangerous drugs, such as the psychedelic LSD, on unsuspecting subjects.

- Agency Contracting. The order expanded the requirement of President Ford's intelligence reorganization that officials of academic institutions be informed of any clandestine relationships with intelligence agencies. Carter expanded this to cover contracts with all private American companies or institutions. However, an exemption for contracts with non-academic institutions was allowed if the Attorney General decided that exposure would undermine essential cover.

- Assassinations. The order repeated the prohibition in Ford's order against any assassinations.

- Covert Actions. The order forbade any covert actions in the United States. The CIA was made the sole authorized agency for peacetime covert actions, except by presidential order.

- Indirect Participation. The order prohibited the agencies from encouraging any other persons or organizations to undertake actions that they themselves were prohibited from doing.

Oversight

Other entities were given oversight responsibilities to supplement that of the Attorney General. The Intelligence Oversight Board was given the right to investigate allegations of questionable agency conduct. Agency Inspectors General and General Counsels were required to report to the board any actions raising questions of legality or propriety. The order did not contain, however, suggestions by the Church committee that the CIA Inspector General and General Counsel be given increased authority to uncover misdeeds.

Finally, the order confirmed the responsibility of intelligence officials to report to the congressional intelligence committees.

—By Harrison H. Donnelly